

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**TYROSH BROWN, #221590,**

**Plaintiff,**

**vs.**

**Case No. 08-14981**

**HONORABLE DENISE PAGE HOOD**

**MDOC, ROBERT J. CLARK, Ph.D.  
and DIANE GARTLAND, *et al.*,**

**Defendants.**

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**ORDER ACCEPTING REPORT AND RECOMMENDATION**

**I. Introduction**

This matter is before the Court on Magistrate Judge Virginia M. Morgan's Report and Recommendation, dated October 28, 2009 [Docket no. 30]. On March 24, 2009, Defendants filed a Motion for Summary Judgment [Docket no. 21]. Magistrate Judge Virginia M. Morgan recommends that Defendants' Motion for Summary Judgment be granted. Plaintiff has not filed Objections to Magistrate Judge Morgan's October 28, 2009 Report and Recommendation.

Plaintiff filed this *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 on December 8, 2008 [Docket no. 1]. Plaintiff alleges that Defendants violated his civil rights while he was a Michigan Department of Corrections (MDOC) prisoner, housed at the Cooper Street Correctional Facility and the Parnall Correctional Facility, because Defendants forced him to participate in Assaultive Offender's Programming ("AOP"). Plaintiff further alleges that his AOP participation violated his First Amendment right to free exercise of religion.

## II. Applicable Law & Analysis

### A. Standard of Review

The Court's standard of review for reviewing a Report and Recommendation is pursuant to 28 U.S.C. § 636. This Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendation to which objection is made." 28 U.S.C. § 636(b)(1)(C). This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate." *Id.*

To preserve this right to appeal the Magistrate Judge's recommendation, Plaintiff is obligated to file objections to the Report and Recommendation within ten days of service of copy, as provided in 28 U.S.C. 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right to appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Secretary of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). No objections were filed to the Magistrate Judge's Report and Recommendation.

The Magistrate Judge recommended that the Court dismiss Plaintiff's claims because they are barred by the statute of limitations. This Court agrees that the Magistrate Judge correctly found that Plaintiff's § 1983 claims are governed by the three-year Michigan personal injury statute of limitations. *See Banks v. City of Whitehall*, 344 F.3d 550, 553 (6th Cir. 2003). The Magistrate Judge correctly determined that the statute of limitations begins to run "when plaintiff knows or has reason to know of the injury which is the basis of his action." *Server v. Turner*, 742 F.2d 262, 273 (6th Cir. 1984). Plaintiff filed his claim on December 1, 2008. Plaintiff argues that he did not discover that he had an injury until his parole board hearing in July 2008. However, Plaintiff

entered AOP on October 26, 2004 and completed the program on October 25, 2005. Thus, the Magistrate Judge correctly concluded that the statute of limitations barred Plaintiff's claim, which accrued before December 1, 2005. Since Plaintiff's claim is barred by the applicable statute of limitations, the Magistrate Judge recommended that Plaintiff's Complaint be dismissed. This Court agrees with the Magistrate Judge's assessment of Plaintiff's claim. This Court also agrees that even if Plaintiff's claim was not barred by the statute of limitations, his claim is not cognizable under 42 U.S.C. § 1983 and Plaintiff fails to state a viable First Amendment free exercise claim.

### **III. Conclusion**

IT IS ORDERED that Magistrate Judge Virginia M. Morgan's Report and Recommendation [**Docket No. 30, filed October 28, 2009**] is ACCEPTED and ADOPTED as this Court's findings and conclusions of law.

IT IS FURTHER ORDERED that Defendants MDOC, Dr. Robert Clark and Dr. Diane Gartland's Joint Motion for Summary Judgment [**Docket No. 21, filed on March 24, 2009**] is GRANTED.

IT IS FURTHER ORDERED that Dr. Darcey Maher's Motion for Summary Judgment [**Docket No. 25, filed on April 3, 2009**] is GRANTED.

IT IS FURTHER ORDERED that this cause of action is dismissed.

S/Denise Page Hood  
Denise Page Hood  
United States District Judge

Dated: March 18, 2010

I hereby certify that a copy of the foregoing document was served upon Tyrosh Brown, Reg. No. 221590, 128 Baylis, Grand Rapids, MI 49507 and counsel of record on March 18, 2010, by electronic and/or ordinary mail.

S/William F. Lewis  
Case Manager